

JUDGE KOEHL

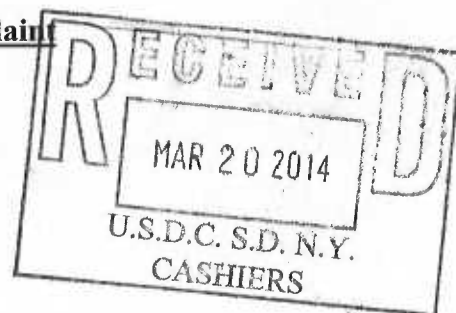
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE EXPLORERS CLUB, INC. :
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Plaintiff, :
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v. :
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DIAGEO PLC, DIAGEO BRANDS B.V., :
DIAGEO AMERICAS SUPPLY, INC., :
DIAGEO NORTH AMERICA, INC., and :
DIAGEO AMERICAS, INC. :
:
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Defendants :
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Civ. _____ ()

Complaint



The Explorers Club (the “Club” or “Plaintiff”), by and through its attorneys, alleges as follows for its complaint against Diageo plc, Diageo Brand B.V., Diageo Americas Supply, Inc., Diageo North America, Inc., and Diageo Americas, Inc. (collectively, “Defendants” or “Diageo”):

NATURE OF ACTION

1. This is an action in law and equity for trademark infringement, false designation of origin, and unfair competition under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*; trademark dilution under 15 U.S.C. § 1125(c); unfair competition under the common law; trademark infringement under New York General Business Law § 360-*k*; trademark dilution and injury to business reputation under New York General Business Law § 360-*l*, and the unlawful use of the name and identification of a non-profit organization under New York General Business Law § 397.

2. This action arises out of Diageo's marketing and sale of whisky under the name "Explorers' Club," which infringes, dilutes, and misappropriates The Explorers Club's distinctive, famous and federally registered trademarks for "The Explorers Club" in a manner that is likely to cause confusion, mistake, and deception among consumers as to the sponsorship, affiliation, connection, or identification of the Explorers' Club whiskies and The Explorers Club, and in fact *has already caused* such confusion among consumers. In addition, Diageo is unlawfully misappropriating the name and other identifying devices of a New York non-profit organization without its written authorization.

3. Diageo has intentionally embarked on a scheme to trade on the popularity, goodwill, and reputation that The Explorers Club and its members have earned in the course of more than 100 years of exploring this world and beyond, and promoting the scientific exploration of land, sea, air, and space by supporting research and education in the physical, natural and biological sciences.

4. Diageo's willful, deliberate, and unauthorized use of The Explorers Club's name and trademarks has damaged, and if continued, threatens to irreparably injure the Club. The Explorers Club's valuable trademarks are at the mercy of Diageo's infringing use. The extent of Diageo's infringement threatens to dilute the distinctiveness of the Club's marks, deteriorating the value that the Club has built through decades of achievement at great risk to its many notable members and at great expense to the Club.

PARTIES

5. Plaintiff, The Explorers Club, Inc. is a charitable corporation as defined in subparagraph (1)(5) of section 102 of the New York Not-For-Profit Corporation Law with a business address of 46 East 70th Street, New York, New York, 10021. Pursuant to Section 201 of that Law, the

Club is a Type-B corporation.¹ The Explorers Club is a multidisciplinary, professional society dedicated to the advancement of field research, scientific exploration, resource conservation, and the ideal that it is vital to preserve the instinct to explore.

6. Upon information and belief, Diageo plc is a corporation having an address and principal place of business of Lakeside Drive, Park Royal, London, NW10 7HQ.

7. Upon information and belief, Diageo Brands B.V. is a subsidiary of Diageo plc and is a private limited company organized under the laws of the Netherlands, having a mailing address of Molenwerf 10-12, Amsterdam, Netherlands 1014BG.

8. Upon information and belief, Diageo Americas Supply, Inc. is a subsidiary of Diageo plc and is a New York Corporation with a registered agent address of Corporate Creations Network Inc., 15 North Mill Street, Nyack, New York, 10960 and a business address of 801 Main Avenue, Norwalk, Connecticut 06851.

9. Upon information and belief, Diageo North America, Inc. is a subsidiary of Diageo plc and is a Connecticut Corporation with a business address of 801 Main Avenue, Norwalk, Connecticut 06851.

10. Upon information and belief, Diageo Americas, Inc. is a subsidiary of Diageo plc and is a Delaware Corporation with a business address of 801 Main Avenue, Norwalk, Connecticut 06851.

11. Upon information and belief, Diageo plc, and each of the above named subsidiaries, have manufactured, imported, advertised, promoted, offered for sale, sold and distributed and/or are manufacturing, importing, advertising, promoting, offering for sale, selling and distributing

¹ The Explorers Club is also a not-for-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code.

products that infringe The Explorers Club's marks and intend to continue to conduct such activities.

12. According to its website, Diageo is "the world's leading premium drinks business with an outstanding collection of beverage alcohol brands across spirits, beer and wine." See <http://www.diageo.com/en-row/OurBusiness/Pages/default.aspx>. Johnnie Walker is a Scotch whisky brand owned by Diageo. Some of the other brands Diageo distributes include Crown Royal, J&B, Windsor, Buchanan's and Bushmills whiskies, Smirnoff, Ciroc and Ketel One vodkas, Baileys, Captain Morgan, Tanqueray and Guinness.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338 with respect to the claims arising under federal law and supplement jurisdiction pursuant to 28 U.S.C. § 1367 and 28 U.S.C. § 1338(b) with respect to the claims arising under the laws of New York State.

14. Venue in this county is proper under 28 U.S.C. § 1391 because defendants conduct or have conducted business in this judicial district and Plaintiff has suffered injury in this district, and because this Court has personal jurisdiction over Defendants in this district.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. The Explorers Club Trademarks Are Distinctive, Famous, And Have Acquired Secondary Meaning

15. The Explorers Club is a not-for-profit corporation, founded in 1904 and incorporated in 1905. *The New York Times* anticipated the fame the Club would go on to achieve when it declared, "The Explorers' Club, which had its first housewarming at the new clubrooms, 23 West Sixty-seventh Street, on Oct. 26, is likely to become one of the most important factors in

American affairs.” A copy of the November 5, 1905, article from *The New York Times* is attached as Exhibit A.



16. To this day, that prediction remains true. The Club has since been recognized by numerous publications covering the growth of this esteemed organization and the many accomplishments of its ever growing membership.


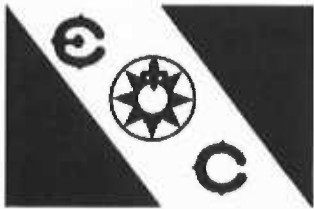
17. The Explorers Club presently encompasses twenty-six chapters throughout the world and its membership includes field scientists and explorers from over sixty countries whose disciplines include: polar exploration, mountaineering, aeronautics, physics, anthropology, archaeology, astronomy, biology, ecology, entomology, marine biology, oceanography, paleontology, planetology, and zoology.

18. The Explorers Club, both at its headquarters and at its Chapters throughout the world, regularly sponsors expeditions, funds student research, presents public lectures, hosts dinners and fundraisers, and organizes film festivals dedicated to its core mission of furthering the pursuits of exploration and scientific discovery. These activities receive substantial media attention, especially in the New York market. *The New York Times* in particular has published hundreds of articles covering the Club’s activities and services. In recent years, the Club has been featured and received unsolicited coverage in online and print publications such as *The New York Times*, *The New Yorker*, *Huffington Post*, *Fox News*, *ABC News*, *NBC News*, *USA Today*, *Outside* magazine, *National Geographic*, *Bloomberg*, *The Wall Street Journal*, *Gotham*, *The New York Observer*, *Thrillist*, and *Gothamist*. The Club’s web series, “Exploring Legends,” featuring interviews with accomplished explorers and scientists, has been shown on Bloomberg, CSPAN and AskMen.com.

a. The Explorers Club Owns Multiple Valid, Incontestable Registered Marks in Addition to Valid, Legally Protectable Unregistered Marks Per the Common Law

19. The Explorers Club owns a collection of marks, both trademarks and collective membership marks, registered with the United States Patent and Trademark Office ("USPTO"):

Mark	Registration No.; Registration Date; Status	Goods/Services
 The Explorers Club Incorporated 1905	0872783 July 8, 1969 Incontestable	Indicating Membership in Applicant
The Explorers Club	0881915 December 2, 1969 Incontestable	Indicating Membership in Applicant
EC 	0881916 December 2, 1969 Incontestable	Indicating Membership in Applicant
Explorers Journal	0882156 December 9, 1969 Incontestable	Scientific and Educational Quarterly Journal
World Center For Exploration	1040331 May 25, 1976 Incontestable	To Indicate Membership in Applicant
The Explorers Club	1311593 December 25, 1984 Incontestable	Banquet Services
The Explorers Club	1361774 September 24, 1985 Incontestable	Books Recounting the Adventures and Culinary interests of organizations

		members; magazines of education and scientific interest; newsletters and awards certificates
EC 	1354215 August 13, 1985 Incontestable	Clothing, Namely- Ties
The Explorers Journal	1344379 June 25, 1985 Incontestable	Periodical Publications, Namely, A Scientific and Educational Quarterly Journal
The Explorers Club	2631432 October 8, 2002 Incontestable	Clothing, namely, golf shirts, caps, neckties
The Explorers Club Travelers	2962855 June 21, 2005 Incontestable	Arranging travel tours, travel agency services, namely, making reservations and booking for transportation, travel booking agencies; travel guide services; and travel information services.
EC 	3530503 November 11, 2008	Printed publications, namely a magazine in the field of exploration.

20. All the aforementioned registrations are valid and subsisting and all but one of these registrations have become incontestable pursuant to 15 U.S.C. § 1065. Copies of the registrations and status pages from the USPTO are attached as Exhibit B.

21. In addition to its rights based on these Federal registrations, the Club has extensive common law rights in the terms, “The Explorers Club,” “Explorers Club” and any similar derivation. From its earliest days, the Club has been known as and referred to as the “Explorer’s Club,” the “Explorers Club,” or even the “Explorers’ Club.”

22. Since its founding in 1904, The Explorers Club has regularly used its marks — both registered and unregistered — in connection with goods and services in ways that ensure that consumers have come to recognize and associate the marks with the Club and its activities. Through the Club’s success and achievements, its marks have become famous and, accordingly, are exceedingly strong marks entitled to a wide scope of protection. The marks are inextricably linked in the public’s perception to The Explorers Club, its accomplished membership, and its philanthropic endeavors. The fame of Club member led expeditions, the variety of accomplishments first achieved by Club members, and the renown and respect with which The Explorers Club is held has led to the creation of a world-wide non-profit organization that is inimitable. Both the federally registered marks and the marks owned by The Explorers Club through its common law rights are strong, inherently distinctive, and have achieved significant secondary meaning.

23. The Explorers Club’s use of its marks in the travel industry predates any use of “Explorers’ Club” by Diageo. By the very nature of the services associated with The Explorers Club, by the global reach of its Chapters and the events they sponsor, and through the media coverage of the Club’s activities throughout the world, the marks of the Club have long been associated with travel and exploration.

b. The Members of The Explorers Club

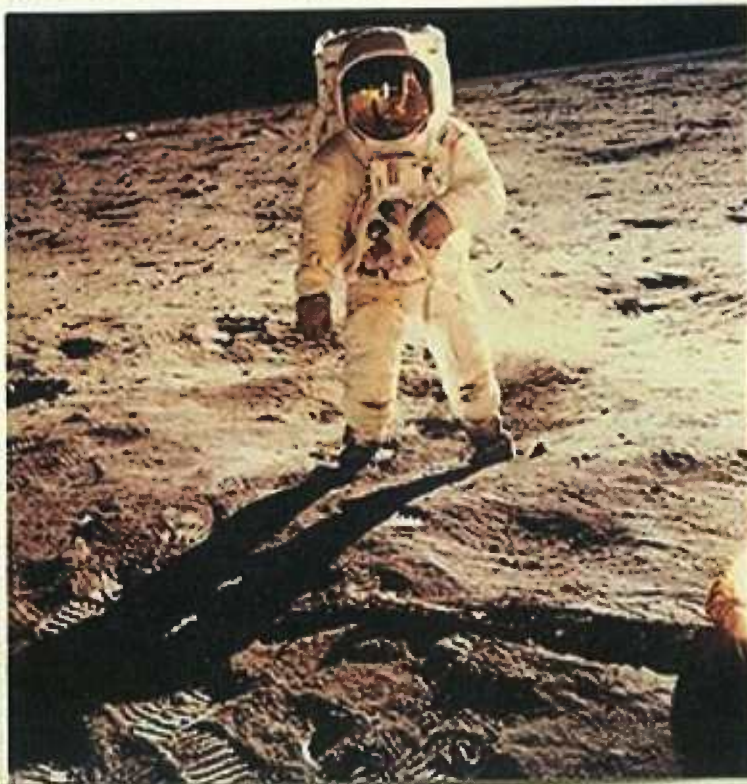
24. Explorers Club members consist of individuals who, as members of the Club and participants in its expeditions, are responsible for some of the most acclaimed discoveries and accomplishments of the last 110 years. The reputation and significance of The Explorers Club is demonstrated by the credentials of those that choose to participate as active members in the Club's mission. Their achievements, and many others, received widespread media attention and public acclaim, establishing the reputation and goodwill of The Explorers Club through decades of courageous expeditions. World-renowned Explorers Club members include:

- | | |
|---------------------------------|-------------------------------|
| a. Robert Peary | n. Bertrand Piccard |
| b. Sir Ernest Shackleton | o. Don Walsh |
| c. Robert Falcon Scott | p. Chuck Yeager |
| d. Charles Lindbergh | q. Neil Armstrong |
| e. President Theodore Roosevelt | r. Buzz Aldrin |
| f. Sir Edmund Hillary | s. Michael Collins |
| g. Tenzing Norgay | t. Walter Cronkite |
| h. Roy Chapman Andrews | u. Sally Ride |
| i. Thor Heyerdahl | v. Kathryn Sullivan |
| j. Jacques Piccard | w. James Cameron |
| k. President Herbert Hoover | x. Jane Goodall |
| l. Lowell Thomas | y. Jacques Cousteau |
| m. Jim Fowler | z. Senator John H. Glenn, Jr. |

25. Explorers Club members are responsible for the most iconic achievements in exploration. Club members were the first to reach the North Pole (Robert Peary and Matthew Henson) and the South (Roald Amundsen), first to the summit of Mount Everest (Sir Edmund Hillary and Tenzing Norgay), first to the deepest point in the ocean (Don Walsh and Jacques Piccard), and first to the Moon (Neil Armstrong, Buzz Aldrin, and Michael Collins). For generations, these epic journeys, courageous expeditions, and inspirational accomplishments have received widespread media attention and public acclaim, cementing the Club's reputation as the champion

of exploration and ensuring that The Explorers Club and its marks have acquired significant secondary meaning.

26. Starting in 1918, such expeditions would frequently take place in the company of the Explorers Club Flag, further lending the Club's imprimatur to the voyage and thus bolstering the Club's reputation and renown. Receiving permission to carry the Explorers Club Flag on an "Explorers Club Flag Expedition" has become a premier honor in exploration. Explorers Club Flag Expeditions have ensured that the Explorers Club Flag has flown at the summit of Mount Everest, reached the deepest part of the world's oceans, and accompanied Buzz Aldrin, Neil Armstrong, and Michael Collins on the first trip to the Moon.



This flag carried to the Moon
on the first Lunar Landing.

July 20, 1969



Presented to the Explorers Club
by the crew of Apollo 11.

Neil Armstrong

Michael Collins

Buzz Aldrin

c. The Explorers Club Research Collection

27. The Explorers Club maintains a significant Research Collection, which it makes available to the public. Indeed one of the original goals of the Club was the “acquisition and maintenance of a Library of exploration and travel.” An early description of this Research Collection, which continues to grow ever larger, is contained in a 1935 letter from the Treasury Department confirming the Club’s tax-exempt status:

“Your organization has an extensive library which consists of over eleven thousand volumes devoted exclusively to exploration, and a large collection of maps and charts. This library is considered one of the most important and complete of its kind to be found anywhere in the world and contains many rare items of great value to explorers and scholars doing research work in the field of exploration.”

A copy of this letter is attached as Exhibit E.

d. The Explorers Club’s Charitable Endeavors

28. The Explorers Club charitable purposes are set forth in Article III of the Club’s bylaws:

“Article III: Club Purposes

To promote exploration; to sponsor, encourage and assist research in the physical, biological, and the natural sciences so as to broaden man's knowledge of all phases of the universe; to sponsor education and educational facilities consonant with the aforesaid purposes of the Club and those specific in its Charter; to foster the interest of people of all ages, races and backgrounds in exploration and scientific research through lectures, publications, conferences, financial grants and all other relevant means; to maintain library, map and other advisory facilities which will assist those interested and engaged in exploration and scientific research; to encourage industry, organizations, foundations, and individuals to promote the general and specific purposes for which this Club was organized.”

29. The Explorers Club supports scientific field research through grant programs that contribute significant funding to individual and group expeditions on a yearly basis. The Club’s

current annual grants consist of the Youth Activity Fund Grant and the Exploration Fund Grant. Other grants are available from various Club Chapters.

30. The Youth Activity Fund Grant provides grants for high school students and college undergraduates to support field research and foster a new generation of explorers dedicated to the advancement of the scientific knowledge of our world.

31. The Exploration Fund Grant provides funding for graduate, post-graduate, doctorate, and early career post-doctoral students to help advance their research careers.

32. The Explorers Club receives grant applications from hundreds of students representing countries around the world. In 2014, the Club received applications from students in 36 different countries with proposals to conduct work in 96 different countries. Grant recipients conduct their research around the world, and are frequently published in peer-reviewed publications.

33. Renowned scientists that received funding for their early research projects include astrophysicist and star of the new television series, "Cosmos: A Spacetime Odyssey," Neil deGrasse Tyson, Ph.D. In his book, "The Sky is Not The Limit: Adventures of An Urban Astrophysicist," he describes the Club as follows:

"The Explorer's Club is a well-paneled, well-upholstered place on Manhattan's Upper East Side where, in every room, you are sure to have some wall-mounted bodiless mammal staring straight at you. The Club attracts, among its members, explorers of every ilk, who go to hang out and share stories of their adventures to the bottom of the ocean, to the tops of mountains, to the depths of jungles, and to the reaches of space."

e. Corporate Sponsorship

34. One measure of the fame and recognition The Explorers Club has obtained is the quantity and quality of corporate sponsorships the Club is able to attract.

35. The Explorers Club's reputation and good will has enabled the Club to fund a significant portion of its activities and grants by licensing its intellectual property.

36. Corporations that license the Club's IP, and the use they make of the Club's marks, are carefully vetted to ensure that they support the charitable and scientific mission of The Explorers Club. The contracts governing these corporate relationships ensure that the Club maintains quality control over the use of its marks. The revenue generated by these licensing opportunities directly funds the Club's charitable work.

i. Corporate Sponsorships in the Liquor Industry

37. The Explorers Club use of its marks in the liquor industry, indeed even in the whisky industry, pre-dates any use of the "Explorers' Club" mark by Diageo.

38. In 2011, The Explorers Club licensed certain of its marks to Whyte & Mackay for the promotion of a new whisky in its Mackinlay's brand, the Mackinlay's Rare Old Highland Malt. This whisky is a recreation of the whisky brought to Antarctica by Sir Ernest Shackleton in 1907 on his Nimrod expedition. Whyte & Mackay held the product launch at The Explorers Club headquarters and its desire to affiliate with the reputation of the Club was succinctly stated by the Marketing Director for Mackinlay's: "What impressed us most about The Explorers Club, besides its obvious connection to Sir Ernest, is their appreciation of discovery, historical heritage, and the ability to consider the future needs of the planet through exploration – today and tomorrow." *See* Exhibit C. Whyte & Mackay contracted to obtain the ability to promote this whisky as the "Whisky of The Explorers Club".

39. The launch of Whyte & Mackay's whisky at The Explorers Club headquarters was covered by the press, and the press release regarding the sponsorship was widely distributed:

- a. "103 YEARS IS apparently just the right amount of time to attract an adventurous crowd. That's how long it took for adventurer Earnest

Shackleton's whisky stash to travel from Antarctica to the Explorer's Club in Manhattan. On November 10, an appreciative capacity crowd attended the launch of Mackinlay's Rare Old Highland Malt Whisky, a meticulous modern recreation of a Scotch whisky left behind by Shackleton and his team in 1908 and rediscovered, frozen in the tundra, in 2007."

"Whyte & Mackay launch Mackinlay's "Shackleton" whisky in NYC." – *Examiner*, November 11, 2011.

- b. "Whyte & Mackay's Mackinlay's Rare Old Highland Malt brand, the replicated Shackleton whisky, has become a corporate sponsor of The Explorers Club, the worldwide centre for exploration that bestowed upon Shackleton honorary membership."

"Shackleton Whisky Sponsor's Shackleton's Old Club" – *Whisky-Drinker*, November 2, 2011.

- c. "The Explorers Club Toasts New Corporate Sponsor Mackinlay's Rare Old Highland Malt Whisky: Shackleton's Abandoned, Rediscovered and Recreated Whisky."

Press release issued November 1, 2011 – available on *Yahoo! Finance*

- d. "Attendees drank a re-creation of the malt whiskey taken to Antarctica by explorer Ernest Shackleton during his 1907 "Nimrod" expedition. A piece of the moon brought back by Apollo astronauts was also on display, as was a chunk of glacier shipped from Iceland."

Coverage of The Explorers Club Annual Dinner in 2013, "Astronauts Celebrate Adventure at Explorers Club Dinner" – *Space.com*, March 20, 2013.

40. At the time Diageo released its infringing Explorers' Club Collection of whisky, the Club still had an ongoing sponsorship agreement with Whyte & Mackay for promotion of its whisky.

41. Upon information and belief, the Explorers Club affiliated Whyte & Mackay whisky was sold in duty free stores alongside Diageo's infringing Explorers' Club Collection.

42. Upon information and belief, in July 2013, Diageo actually purchased a controlling interest in White & Mackay's parent company, United Spirits. After this purchase, Diageo found itself in the position of selling and marketing the infringing Explorers' Club Collection under its Johnnie Walker brand *at the same time* that its new affiliate, Whyte & Mackay, had a contractual agreement with The Explorers Club for the promotion of a different whisky and the rights to use

certain of the Club's IP in promoting its product, including the right for its product to be called "Whisky of The Explorers Club."

43. The Club has also entered into sponsorship arrangements with other liquor, beer, and wine companies and has developed Explorers Club labeled beer and wine. Recent examples of sponsorships in the liquor industry include Redwood Creek wines, Dos Equis, and Double Cross Vodka.

ii. Additional Corporate Sponsorships

44. Since at least the early 1990s, The Explorers Club has affiliated with travel organizations to run THE EXPLORERS CLUB TRAVELERS program. Through this program, consumers are able to purchase tickets on Explorers Club sponsored voyages led by renowned Explorers Club members. These trips have been marketed, sold, and taken place around the globe.

45. Eddie Bauer, producer of high quality and reputable outdoor equipment, apparel and other products, contracted with the Club to promote its brand and products. Eddie Bauer obtained a license to use certain of the Club's IP in its promotional materials, and obtained the right to be designated as "Outfitter of The Explorers Club" and "Outfitter to The Explorers Club." Eddie Bauer also sponsored two significant grant programs with The Explorers Club: the "Eddie Bauer – Explorers Club Youth Grant" and the "Eddie Bauer – Explorers Club Grant for Expeditions." These grants funded multiple expeditions relating to climate change, preservation, and sustainability, consistent with the mission of The Explorers Club.

46. Land Rover sponsored a recent film festival at The Explorers Club, obtaining the rights to use The Explorers Club's intellectual property for approved promotional purposes, including having the following title accompany the promotion of the film festival: "Land Rover Presents the 2006 Explorers Club Documentary Film Festival."

47. Rolex Watch USA, Inc. contracts with the Club for promotional exclusivity in the jewelry/timepiece market. Rolex licenses certain of The Explorers Club marks for pre-approved uses. In addition, Rolex sponsors an “Artist in Residence” grant with The Explorers Club.

48. Film studios also contract with the Explorers Club to hold promotional events and even premiere new releases at the Club’s headquarters.

49. In October, 2013, Warner Brothers Picture held a promotional luncheon at the Club’s headquarters to support the release of the 2013 Academy Award nominated film *Gravity*, starring George Clooney and Sandra Bullock. Coverage of this event was published on *Yahoo News*, *Huffington Post*, and *Vanity Fair*, among other publications:

“‘We were in a machine that’s never been invented before,’ Clooney said before lunch, near the stuffed polar bear at the Explorer’s Club in Manhattan, where the intimate event was held.”

“George Clooney on His Uncomfortable *Gravity* Space Suit: ‘Not as Bad as the Batsuit, but Just About.’” –*Vanity Fair*, October 3, 2013.

50. In November 2013, a luncheon was held to celebrate the release of Relativity Media’s feature film, *Out Of The Furnace*, starring Casey Affleck and Christian Bale. This luncheon, and the Club’s headquarters, was featured in such publications as *Huffington Post*, *Variety*, *The Montreal Gazette*, *World News*, and online blogs such as *Star Sightings*.

“Affleck was curious about this place; he had heard of the Explorers Club as a boy but never before visited. Richard Wiese, its youngest ever president now acting as ambassador, took Affleck behind the velvet ropes up the stairs of the spacious Upper East Side townhouse, adorned with photos of well-known and obscure adventurers: a wood-paneled man cave, you could say, but Wiese was quick to point out that Sigourney Weaver is also a member. The enthusiastic guided tour filled with lore led to a historic shot of the subject of Affleck’s next film, about naval officer Robert Falcon Scott and his expeditions to the regions of Antarctica.”

“Casey Affleck Explorers the Explorers Club” – *Huffington Post*, December 2, 2013.

51. In 2013, The Explorers Club hosted the U.S. premiere screening of the Academy Award nominated motion picture *Kon-Tiki*; a dramatization of Thor Heyerdahl's famous voyage. Press coverage around this screening, and a luncheon promoting its release held at the Club by the Weinstein Group, included publicity of The Explorers Club in publications such as *Huffington Post*, *National Post*, and *NPR*.

"In a new film of this voyage, *Kon-Tiki*, made with a fine cast of Norwegian actors, Thor Heyerdahl (Pal Sverre Hagen) enters The Explorers Club hoping to find support for this mad trip, and last week, in anticipation of the film's opening and an exhibition of the raft, The Weinstein Company hosted a luncheon for a small group at The Explorers Club."

"*Kon-Tiki* at The Explorers Club and in Battery Park City" – *Huffington Post*, April 14, 2013.

"The members of the Explorers Club are hearty men with big stories of riding the ragged edge of mortality in the pursuit of knowledge. The filmmakers look at Freuchen's lost foot, and their takeaway is that exploration needs adventure. And sure enough, *Kon-Tiki* will have no shortage of death-defying drama, though it sometimes comes at the expense of fact."

"*Kon-Tiki*: Seaworthy, And Then Some" – *NPR*, April 25, 2013.

52. In addition to the 2012 feature film, Heyerdahl's famous expedition was recounted in his best-selling book, *Kon-tiki*, and a 1951 Academy Award winning documentary of the same name. The Explorers Club famously sponsored the expedition, and the Explorers Club Flag flew proudly atop the raft; the only Flag on *Kon-Tiki* that did not represent a national government. Heyerdahl's book recounting the expedition has been published in sixty-five languages and sold more than 50 million copies, ensuring that The Explorers Club was widely featured as a prominent supporter of one of the most inspirational stories of the 20th century. As Heyerdahl described the Club in *Kon-Tiki*:

"When the door to New York is shut behind one, one is swallowed up in an atmosphere of lion-hunting, mountaineering, and polar life. Trophies of hippopotamus and deer, big-game rifles, tusks, was drums and spears, Indian carpets, idols and model ships, flags, photographs and maps, surround the

members of the club when they assemble for a dinner or to hear lecturers from distant countries.”

53. Unlike the numerous corporations that have partnered with The Explorers Club to promote their brand and products, and that are vetted by the Club, approved by the Club, and who actively contribute to the charitable endeavors of the Club, upon information and belief, Diageo chose to simply co-opt and infringe on the image, name and marks of The Explorers Club with the aim of obtaining a free ride.

f. Explorers Club Dinners and Awards

54. Since its inception in 1904, The Explorers Club has held an annual dinner, now named the Explorers Club Annual Dinner (“ECAD”) to honor achievements in exploration. This dinner, the awards that are bestowed, and the exotic food that is served, is a regularly covered media event. ECAD has become the Club’s largest fundraiser, and has been featured in *The New York Times*, *the Huffington Post*, *The Wall Street Journal*, *Bloomberg*, and numerous other publications.

55. The 2014 ECAD was held on March 15th, and included speeches from Astronauts Buzz Aldrin, Michael Lopez-Alegria, and Franklin Chang Diaz, tech luminaries Jeff Bezos and Elon Musk, His Royal Highness Prince Jigyel Ugyen Wangchuck of Bhutan, UNESCO Director-General Irina Bokova, and renowned oceanographer Walter Munk. This year Stephen Hawking gave the keynote speech, beginning his remarks with “Welcome to The Explorers Club, the world center of exploration.” The international press coverage of this event was significant and new articles continue to be published daily.

56. A recent article in the *New York Daily News* refers to the annual dinner as the “Academy Awards for men and women who venture into uncharted territory.”

“NASA legend Michael Lopez-Alegria will take the stage at the Explorers Club dinner on Saturday – the annual Academy Awards for men and women who venture into uncharted territory – but he won’t be venturing far from his culinary comfort zone.”

“The Explorers Club’s annual dinner is not for the faint of stomach” – *New York Daily News*, March 10, 2014.

57. James Cameron, last year’s recipient of the Explorers Medal for his dive to the Ocean floor in the Deepsea Challenger, described the honor he felt at receiving this prestigious award:

“I can’t express to you what an amazing honor this is. Its uh...this is definitely the Academy Awards of Exploration. There’s no question”

“It’s going to be a room full of people that I admire, some of them as far back as when I was a kid, you know, John Glenn, Scott Carpenter, people like that. To be amongst this group and receiving this medal it’s such a validation of all the exploration work I’ve been doing over the last 15 years. “

Red Carpet Network – RCN.tv

g. Media Coverage of The Explorers Club

58. The Explorers Club has been, and continues to be, the subject of extensive media coverage, especially in the New York area. Countless articles, dating back to the Club’s founding in 1904, are available covering the activities of the Club and its members. Recent headlines include:

- a. “Stephen Hawking Tells Explorers to ‘Boldly Go’ Beyond Earth” – *NBC News.com*, March 19, 2014.
- b. “Amazon CEO’s Moon Rocket Engine Recovery Team Honored by Explorers Club” – *Space.com*, March 18, 2014.
- c. “Adventurous eating” – *Reuters*, March 17, 2014
- d. “Scene Last Night: Jeff Bezos Eats Gator, Elon Musk Space” – *Businessweek*, March 17, 2014.
- e. “Stephen Hawking to Headline Star-Studded Explorer’s Club Gala” – *LiveScience*, March 14, 2014.
- f. “The Explorers Club’s Members Have Seen it All.” – *Gotham*, November 18, 2013

- g. “Explorer plans hunt for Genghis Khan’s long-lost tomb.” *Fox News*, November 18, 2013.
- h. “Explorers Club Journeys to New Depths with World Record Diver.” – *Huffington Post*, November 18, 2013.
- i. “Modern Marco Polos: ‘Golden age’ of exploration is now, Explorers Club says.” – *Fox News*, October 23, 2013
- j. “The Explorers Club: They’ve got lions, secret radio control rooms, and candied scorpions” – *Thrillist*, March 19, 2013.
- k. “They Hunt, Gather, Explore, Celebrate” – *The New York Times*, October 21, 2012.
- l. “How to Circumnavigate Manhattan With A Sacred Mountain Explorer” – *Huffington Post*, May 16, 2012.
- m. “Did Somebody Say Indiana Jones” – *The New York Times*, April 22, 2007.

59. Through the substantial investment in, and continuous and expanding use of, The Explorers Club marks since 1904, and the extraordinary unsolicited publicity and media coverage given to The Explorers Club, the Club’s marks have achieved fame and significant secondary meaning, such that the Explorers Club marks identify The Explorers Club, its decades of achievement, and the high quality of its lectures, dinners, events, fundraisers, educational opportunities, and other services in exploration and field science. The fame and secondary meaning of the Explorers Club marks provide bona fide credentials in travel and exploration to those corporations that affiliate with the Club.

DEFENDANTS’ BUSINESS AND ITS UNLAWFUL CONDUCT

B. Diageo Knowingly Co-opted The Explorers Club’s Name, Marks, and Image.

60. Upon information and belief, at all times relevant hereto, Diageo had knowledge of The Explorers Club’s ownership of the Explorers Club marks, including their exclusive right to use and license the Explorers Club marks, and the goodwill associated therewith.

61. In late 2012, Diageo launched the “Explorers’ Club Collection” of Johnnie Walker scotch whiskies. The Explorers’ Club Collection is sold exclusively in duty free stores. Diageo’s marketing campaign invites travelers to “Start Exploring” and promotes the Explorers’ Club Collection as a “Trusted Companion To Adventure.”

62. Diageo has marketed the Explorers’ Club Collection with what Diageo describes as its largest ever investment in travel retail. Upon information and belief, Diageo has appropriated the name, image, and trademarks of The Explorers Club in an effort to obtain immediate legitimacy as a product associated with travel, exploration, and adventure.

63. Upon information and belief, the net effect of Diageo’s actions will be to confuse consumers into believing that Diageo’s infringing products have received the approval and sponsorship of The Explorers Club, and the reputation and credentials that go along with such approval.

64. Diageo’s acts have already harmed and threaten to irreparably damage the hard-earned reputation and goodwill The Explorers Club has established through over a century of renowned achievements and charitable endeavors.

a. Diageo Launches the Explorers’ Club Collection and Unlawfully Co-opts The Explorers Club’s Marks, Reputation, and Goodwill

65. Upon information and belief, Diageo announced the launch of a line of Johnnie Walker scotch whiskies called the Explorers’ Club Collection at the Tax Free World Associations (“TFWA”) exhibition in Cannes on October 25, 2012.

66. Upon information and belief, The Explorers’ Club line is available exclusively in duty-free stores, and is “inspired by travel, and available exclusively for travellers.”

67. The Target consumer of Diageo’s products are “highly valued travel retail consumers.” See Exhibit D. As reported by *The Wall Street Journal*:

“Duty-free stores, found in airports’ international departure zones, are magnets for wealthy travelers shopping for gifts and looking to splurge on tax-free luxury products. Whether flying for business or pleasure, these shoppers are the target for Johnnie Walker Explorers’ Club, a collection of blends exclusive to duty-free stores that Diageo launched in December last year.”

“Diageo PLC Brings Exclusive Blends of Johnnie Walker Scotch to Airport Duty Free Stores.” – *The Wall Street Journal*, November 13, 2013.

68. Upon information and belief, Diageo’s Explorers’ Club whisky is now available in at least 120 different international airports, and in multiple stores within those airports.

69. The Explorers’ Club Collection currently consists of the Trade Route Series, a set of three whiskies labeled The Spice Road, The Gold Route, and The Royal Route. Upon information and belief, the Trade Route Series is the first of multiple series that Diageo intends to release as part of the Explorers’ Club Collection.

- a. Upon information and belief, the first whisky released in the Explorers’ Club Collection, The Spice Road, launched in November or December 2012, in Europe, the Middle East, and Australia and in the United States in January 2013.
- b. Diageo released the second whisky, The Gold Route, in March 2013.
- c. Diageo released the third whisky, The Royal Route, in October 2013.



70. At the announcement of the Explorers' Club Collection in Cannes, Diageo stated that its investment in the Explorers' Club Collection represents a "big change" in Diageo's attitude to travel retail and emphasized that Diageo's "ambition is very clear; we want to make sure that we grow at double digits and ahead of the category."

71. According to Diageo's marketing campaign, the inspiration of the Explorers' Club Collection is the John Walker & Sons "Travellers Room" in London:

"It is based on the spirit of the Travellers' Room established by Alexander Walker at the company's headquarters in the City of London in the 1890s. Close to the shipping houses and docks from which its agents journeyed the world, they gathered to exchange stories and learnings from their travels, in turn inspiring generations of master blenders."

WhiskyIntelligence, March 9th, 2014.

72. Diageo did not name its collection the "Travellers Room Collection," the "Travellers Collection," or any other conceivable non-infringing derivation that would link its products to travel and exploration. For instance, a "Dos Equis Explorer Lounge" recently opened in the Jackson Atlanta International Airport, demonstrating the ease with which Diageo could have developed a non-infringing marketing concept that maintained its desired affiliation with travel, exploration, and adventure.

73. Upon information and belief, Diageo never used the term "Explorers' Club" or "The Explorers' Club" in commerce prior to the launch of the Explorers' Club Collection in 2012.

74. Upon information and belief, because the "Travellers' Room" had no meaning, reputation, or good will in the marketplace, Diageo instead chose to co-opt the name, marks, and image of The Explorers Club. In an attempt to realize its ambition and accelerate its new focus on travel retail, Diageo intentionally misappropriated the name, trademarks, and image of The Explorers Club. Diageo has relied, and will continue to rely, substantially upon the Explorers

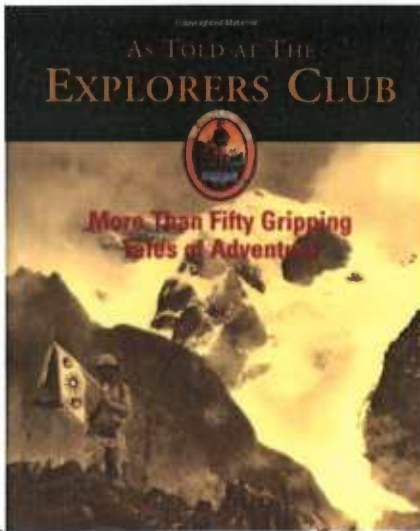
Club's existing goodwill, expenditures, labor, recognition, and extensive credentials in travel and exploration.

75. Upon information and belief, the overall impression of Diageo's product labeling and global marketing campaign creates, and is designed to create, an unmistakable, and purposeful, affiliation with The Explorers Club's name, trademarks, and image.

76. Upon information and belief, in all instances, "Explorers' Club" is the most prominent term on Defendants' infringing products. The term "Explorers' Club" is always isolated from any other words, is centrally located on the products, and "Explorers' Club" and "Collection" are in a larger and bolder font than any other words.



77. Upon information and belief, Diageo uses a font that is confusingly similar to the font used by Plaintiff for decades to display its name and trademarks. Compare the above use by Diageo to the below use by The Explorers Club. The image below is of a book published by the Club.



78. In articles discussing Diageo's products and on the websites of duty free stores, the products are often described as the "Explorers' Club blend", and "The Explorers Club range," among other terms, demonstrating that in the marketplace, Diageo's products are referred to as "Explorers Club" whiskies as opposed to the "Johnnie Walker Explorers' Club Collection." In addition, media coverage, duty free store websites, and even executives of Diageo, refer to the line of whiskies as "The Explorers Club Collection," incorporating the entire, exact name of The Explorers Club. For example:

- a. "This week (*November 27th*) Johnnie Walker release the first in a new line of whiskies named **The Explorers' Club Collection** that celebrates the timeless spirit of todays world traveler." – *Voda Magazine*, November, 30, 2012.
- b. "**The Explorers' Club Collection** was launched in November 2012 and it is on track to be the biggest ever spirit brand launch in travel retail." [emphasis added] – "Diageo: Brunch-time call with the Presidents," Gilbert Ghostine, President, Asia Pacific. May 14, 2013.

79. Upon information and belief, Diageo was not content to only imitate The Explorers Club's name and trademarks. Instead, Diageo advertised, promoted, and sold its infringing

products in imitation pop-up clubs that replicate the look of The Explorers Club headquarters. The overall impression given to consumers through Diageo's evocation of the Club's reputation for travel, adventure, and exploration greatly enhances the likelihood of confusion in the marketplace.

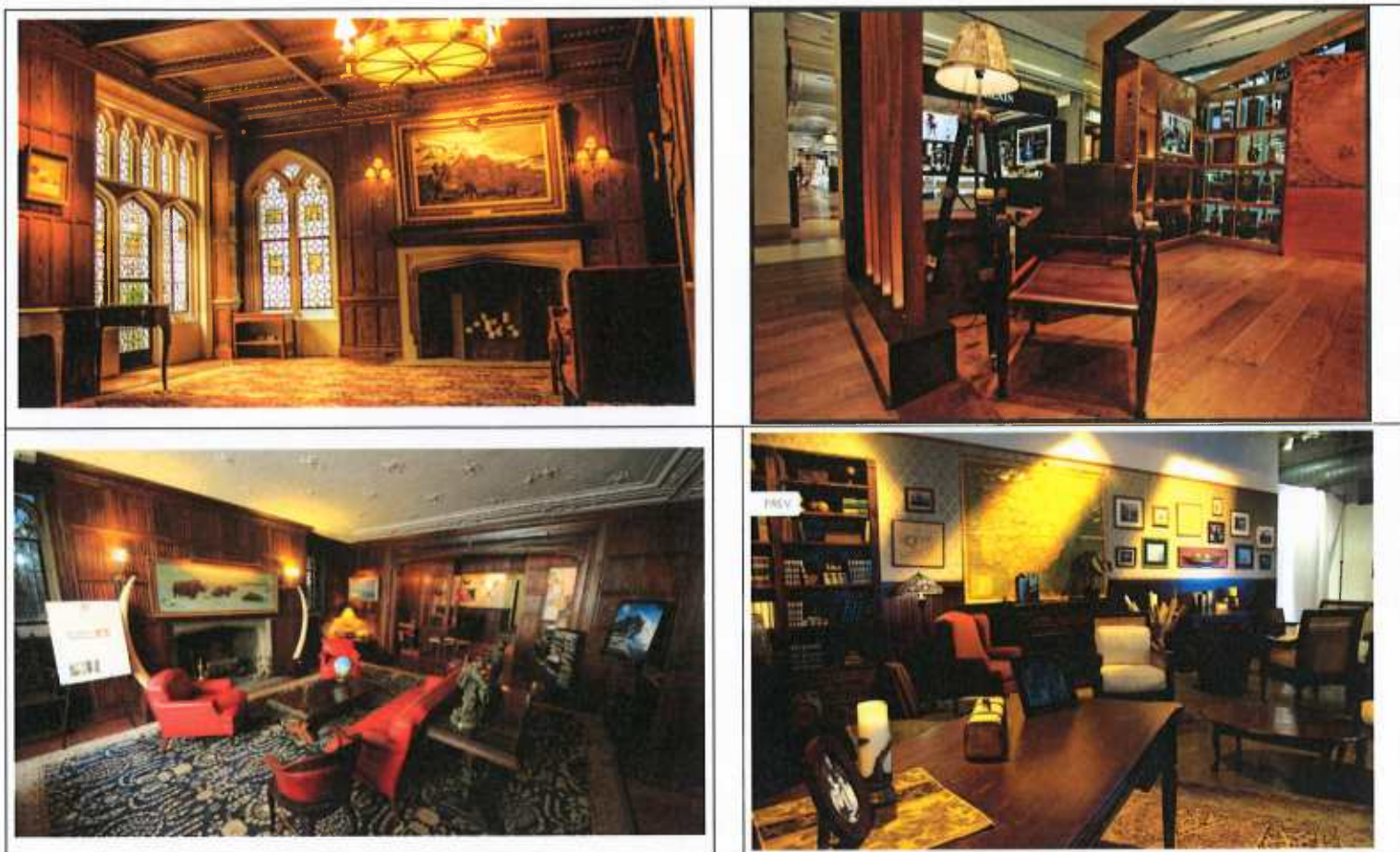
80. As the pictures demonstrate, Diageo placed these imitation pop-up clubs in prominent locations in airport terminals and duty free stores:

The Explorers Club Headquarters



Diageo's "Explorers Clubs"





81. Upon information and belief, in addition to constructing imitation “clubs”, Diageo’s campaign has included building tasting kiosks in airports, displaying prominent print and digital ads throughout airport terminals, producing online promotional videos, and disseminating press releases that continuously attempt to position the Explorers’ Club Collection as being connected to travel, adventure, and exploration. Attached as Exhibit F are additional examples of the imitative displays and pop-up clubs built by Diageo and its partners.

82. Upon information and belief, statements made by Diageo in order to affiliate its products with the actual Explorers Club’s history and reputation in travel, adventure, and exploration include:

- a. Remarking that “we are celebrating the richness of travel and exploration today. It is exclusively available in duty free outlets around the world and we are confident that as a trusted companion to adventure, it will inspire new and bold journeys in today’s world travellers.”
- b. Press releases stating that the Explorers’ Club Collection is “aimed to recalling the golden age of travel and exploration.”
- c. Promotional videos and advertisements stating that the Explorers’ Club Collection is “inspired by epic journeys.”
- d. Promotional videos and advertisements stating that the Explorers’ Club Collection is “a trusted companion to adventure.”

83. Upon information and belief, prior to the launch of the Johnnie Walker Explorers’ Club Collection, Diageo knew that The Explorers Club was sponsored by another whisky company, Whyte & Mackay, as part of that company’s efforts to sell and promote a whisky associated with exploration and adventure.

84. Upon information and belief, Diageo continued to market, sell, and release new products in its Explorers’ Club Collection after it acquired a controlling interest in United Spirits, the parent company of Whyte & Mackay.

b. Diageo’s Unlawful Use of The Explorers Club’s Marks Has Caused and is Likely to Keep Causing Consumer Confusion

85. The use of The Explorers Club name and marks by Diageo and the imitation of The Explorers Club in Diageo’s marketing campaign are not only likely to confuse consumers, they have *already confused consumers* as to the sponsorship, affiliation, connection, or identification of the Explorers’ Club whiskies and The Explorers Club.

86. Consumers have encountered the products and advertisements of the Explorers' Club Collection and believed it to be affiliated with, or sponsored by, The Explorers Club.

87. Consumers have purchased products of the Explorers' Club Collection with the belief that it was affiliated with The Explorers Club.

88. Upon information and belief, consumers have seen bottles of Explorers' Club whisky purchased by other individuals, and believed them to be affiliated with The Explorers Club.

89. Sales representatives at duty free stores in which the Explorers' Club whiskies are sold have been asked by numerous consumers whether the products are affiliated with The Explorers Club.

90. Sales representatives at duty free stores have affirmed to consumers that the Explorers' Club whiskies are connected with The Explorers Club.

91. A sales representative told the President of The Explorers Club not only that the whisky was affiliated with The Explorers Club located in New York, but in fact, that it was made there.

c. Diageo Has Refused to Cease and Desist from Using the Infringing Marks or Engage in Good Faith Discussions Regarding a License for Said Marks

92. For decades, The Explorers Club has actively and successfully policed the use of its name and trademarks through cease and desist letters, informal communications, filing oppositions in the U.S. Patent & Trademark Office, and filing civil complaints against infringing users.

93. The Explorers Club has attempted to negotiate towards the resolution of this matter and has been rebuffed by Diageo.

94. On April 26, 2012, Diageo filed trademark applications in the United States Patent and Trademark Office for the marks "Johnnie Walker Explorers' Club Collection" and "Johnnie Walker Explorers' Club Collection The Spice Road."

95. On February 19, 2013, Diageo's application for the mark "Johnnie Walker Explorers' Club Collection" was published for opposition.

96. On February 26, 2013, Diageo's application for the mark "Johnnie Walker Explorers' Club Collection The Spice Road" was published for opposition.

97. On March 14, 2013, The Explorers Club timely filed a Request for Extension of Time to Oppose for Good Cause the registration of Diageo's marks for the "Johnnie Walker Explorers' Club Collection" and "Johnnie Walker Explorers' Club Collection The Spice Road."

98. On April 18, 2013, The Explorers Club sent a letter to Diageo notifying Diageo of its infringing use of The Explorers Club marks. Upon information and belief, Diageo did not respond to this letter.

99. On June 13, 2013, George Gowen, Chair of the Legal Committee of the Explorers Club, sent another letter to Diageo, enclosing the April 18th letter.

100. On July 8, 2013, George Gowen sent a letter to Diageo suggesting that changing the product name to the "Explorers Lounge" would fill Diageo's need to associate with travel and exploration.

101. On August 9, 2013, The Explorers Club timely filed a notice of opposition to the registration of Diageo's marks for the "Johnnie Walker Explorers' Club Collection" and "Johnnie Walker Explorers' Club Collection The Spice Road."

102. Diageo's conduct is causing immediate and irreparable injury to The Explorers Club and to its respective goodwill and reputation. Diageo's conduct will continue to damage The Explorers Club and deceive the public unless enjoined by this Court.

103. Upon information and belief, the foregoing actions of Diageo were undertaken willfully, and in deliberate disregard of The Explorers Club's rights, and for the purpose of intentionally

misappropriating and capitalizing on The Explorers Club's good will. Diageo's conduct is malicious and is undertaken with an intent to reap the benefit of The Explorers Club's goodwill, fame, and notoriety achieved over a 110 years of incredible accomplishments.

104. The foregoing acts have occurred in, or in a manner affecting, interstate commerce.

FIRST CAUSE OF ACTION

Federal Trademark Infringement Under 15 U.S.C. § 1114

105. The Explorers Club repeats and incorporates by reference the allegations contained in the foregoing paragraphs.

106. Defendant's aforementioned acts constitute willful violation of The Explorers Club's marks in violation of the Lanham Act, Section 32, 15 U.S.C. §1114.

107. Upon information and belief, by such wrongful acts, Defendants have caused, and unless restrained by the Court under 15 U.S.C. § 1116 will continue to cause, serious irreparable injury and damage to plaintiff and to the goodwill associated with The Explorers Club's marks. Plaintiff is without an adequate remedy at law.

SECOND CAUSE OF ACTION

Federal Unfair Competition and False Designation Of Origin 15 U.S.C. § 1125

108. The Explorers Club repeats and incorporates by reference the allegations contained in the foregoing paragraphs.

109. Defendants' aforementioned acts constitute unfair competition, false designation of origin, false representation, false advertising, and false description in violation of the Lanham Act, Section 43(a), 15 U.S.C. § 1125(a). Defendants' unauthorized use of The Explorers Club marks is likely to cause confusion, or to cause mistake, or to deceive as to the sponsorship, affiliation, connection, or association of Defendants or Defendants' commercial activities with The Explorers Club or The Explorers Club's commercial activities, or as to the origin,

sponsorship, or approval of Defendants' services or commercial activities by The Explorers Club.

110. Upon information and belief, by such wrongful acts, Defendants have caused, and unless restrained by the Court will continue to cause, serious irreparable injury and damage to plaintiff and to the goodwill associated with The Explorers Club's marks. Plaintiff is without an adequate remedy at law.

THIRD CAUSE OF ACTION

Trademark Dilution under the Lanham Act 15 U.S.C. § 1125(c)

111. The Explorers Club repeats and incorporates by reference the allegations contained in the foregoing paragraphs.

112. Defendants' aforementioned acts constitute trademark dilution in violation of the Lanham Act, Section 43(c), 15 U.S.C. § 1125(c).

113. Upon information and belief, by such wrongful acts, Defendants have caused, and unless restrained by the Court will continue to cause, serious irreparable injury and damage to plaintiff and the goodwill associated with The Explorers Club's marks. Plaintiff is without an adequate remedy at law.

FOURTH CAUSE OF ACTION

New York Trademark Infringement and Unfair Competition
N.Y. Gen. Bus. Law § 360-k

114. The Explorers Club repeats and incorporates by reference the allegations contained in the foregoing paragraphs.

115. Defendant's aforementioned acts constitute willful violation of The Explorers Club's marks in violation of the N.Y. Gen. Bus. Law § 360-k.

116. Upon information and belief, by such wrongful acts, Defendants have caused, and unless restrained by the Court will continue to cause, serious irreparable injury and damage to plaintiff

and to the goodwill associated with The Explorers Club's marks. Plaintiff is without an adequate remedy at law.

FIFTH CAUSE OF ACTION

New York Trademark Dilution and Injury to Business Reputation
N.Y. Gen. Bus. Law § 360-1

117. The Explorers Club repeats and incorporates by reference the allegations contained in the foregoing paragraphs.

118. Defendant's aforementioned acts constitute trademark dilution and injury to business reputation in violation of N.Y. Gen. Bus. Law § 360-1.

119. Upon information and belief, by such wrongful acts, Defendants have caused, and unless restrained by the Court will continue to cause, serious irreparable injury and damage to plaintiff and to the goodwill associated with The Explorers Club's marks. Plaintiff is without an adequate remedy at law.

SIXTH CAUSE OF ACTION

Common Law Trademark Infringement

120. The Explorers Club repeats and incorporates by reference the allegations contained in the foregoing paragraphs.

121. Defendants' aforementioned acts constitute unfair competition under the common law.

122. Upon information and belief, by such wrongful acts, Defendants have caused, and unless restrained by the Court will continue to cause, serious irreparable injury and damage to plaintiff and to the goodwill associated with The Explorers Club's marks. Plaintiff is without an adequate remedy at law.

SEVENTH CAUSE OF ACTION

Unlawful Use of the Name and Identification of a Non-Profit Organization
N.Y. Gen. Bus. Law § 397

123. The Explorers Club repeats and incorporates by reference the allegations contained in the foregoing paragraphs.

124. Defendants' aforementioned acts constitute unlawful use of the name and identification of a non-profit organization in violation of N.Y. Gen. Bus. Law § 397.

125. Upon information and belief, by such wrongful acts, Defendants have caused, and unless restrained by the Court under will continue to cause, serious irreparable injury and damage to plaintiff and to the goodwill associated with The Explorers Club's name. Plaintiff is without an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, The Explorers Club prays that the Court enter judgment:

126. Granting permanent injunctive relief under 15 U.S.C. § 1116 restraining Defendants and all of their respective officers, agents, servants, representatives, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and all other persons acting in concert with them be permanently enjoined from:

- a. registering or maintaining any federal or state trademark registration of any names, words, designations, symbols confusingly similar to The Explorers Club's registered and common law marks;
- b. using any names, words, designation, or symbols which are confusingly similar to, or which colorably imitate, The Explorers Club marks, or which are likely to cause confusion or mistake in the mind of the public or to deceive the public into the belief that Defendants' business and/or goods are in any way associated with or related to The Explorers Club;

- c. Engaging in false designation of origin, false description, false advertising or false representation or otherwise engaging in unfair competition, unfair business or deceptive trade practices or competing unfairly with The Explorers Club;
- d. Engaging in any other conduct that is likely to cause confusion or to cause mistake or to deceive as to the source, affiliation, sponsorship, connection, or identification of Defendants' business and products with The Explorers Club; and
- e. Using any Internet domain name including "Explorers Club" or any similar derivation.

127. Direction Defendants to file, within ten (10) days from entry of an injunction, a declaration with this Court signed under penalty of perjury certifying the manner in which Diageo has complied with the terms on the injunction.

128. Directing Defendants to recall from the trade, including any and all distributors, partners, associate organizations, and all other third parties, any and all infringing marketing products bearing the Explorers Club marks and/or any and all products bearing any mark that is confusingly similar to The Explorers Club's marks, along with all marketing, advertising, promotional and sales material used in connection with Defendants' products, and deliver them to a location directed by Plaintiff at Defendants' expense.

129. Directing Defendants to account for all gains, profits and advantages derived from the acts of infringement, false designation, unfair competition and for their other violations of law, and pay to The Explorers Club all profits realized by Defendants by reason of the unlawful acts by Defendants as set forth in this Complaint, pursuant to 15 U.S.C. § 1117 and New York General Business Law § 360-m.

130. Directing that Defendants be ordered to pay treble damages to The Explorers Club on account of the Defendants' willfull, intentional, and bad faith conduct pursuant to 15 U.S.C. § 1117 and New York General Business Law § 360-m.

131. Directing that Defendants be ordered to pay to The Explorers Club punitive and exemplary damages as provided by law.

132. Directing that Defendants be ordered to pay to The Explorers Club its reasonable attorneys' fees, costs and disbursements incurred herein in view of Defendants' intentional and willful infringement, pursuant to 15 U.S.C. § 1117 and New York General Business Law § 360-m.

133. Awarding The Explorers Club pre-judgment and post-judgment interest to the maximum extent provided by law;

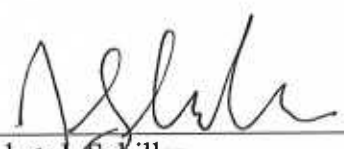
134. Awarding The Explorers Club such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

135. Pursuant to the Federal Rules of Civil Procedure 38, Plaintiff hereby demands a trial by jury of all issues triable of right by a jury.

Dated: New York, New York
March 20, 2014

By: _____


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